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LANGUAGE AND LAW: BREVITY AND DRAFTING IN LAW, BUSINESS, AND THE SOCIAL SCIENCES

Abstract. In this paper, the author intends to present an approach against lengthy contracts, judgements, and pleadings. He describes the advantages of brevity, conciseness, and plain English, focusing on research in Israel and abroad. An extreme example of how a whole page may be condensed into one sentence is provided by the author, as well as the opinion of a Supreme Court Chief Justice regarding methods to be used in writing good judgments, and a lawyer's proposal to summarize pleadings. In the second part of this paper, the author briefly illustrates the differences between three disciplines: Law, Business Administration, and Social Sciences. He proposes that the Law should examine and adopt several elements from other disciplines that can have a positive impact on legal language.

Keywords: brevity, conciseness, length of judgments, pleadings and contracts, language in law, language in business, language in social science, unilateral contract.

Introduction

In recent decades, the western world and particularly the United States have seen an increasingly legalistic approach. Contracts and judgments have become much longer. For example, Feinstein (2017) examined the length of judgments of the Israeli Supreme Court and found that their average length rose from four pages in 1960 to eight pages in 1980, to 48 pages in 2006 and to 65 pages in 2011. At the same time, a movement has arisen in favor of using plain English to simplify the wording of contracts and other documents, particularly in the United States, the UK, and Australia. After many years of public pressure to improve the readability of documents, clear legal wording has become a legal requirement in the United States. It was decided as early as 1993 that United States federal institutions must word regulations

in a simple and easy to understand manner in order to reduce their potential as sources of uncertainty and litigation. Furthermore, the U.S. Plain Writing Act of 2010 requires the United States federal government to word all documents and forms in “a clear, concise and organized manner” (Kaplan, 2015). Additional federal and state laws require plain language in consumer documents (Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010; Credit CARD Act of 2009; Improving Regulation and Regulatory Review, 2011; Civilian Health and Medical Program of the Uniformed Services, 1996; Regulatory Planning and Review, 1993; Plain Language Consumer Contract Act; W. Va. Code § 46A-6-109; Cal. Gov’t Code § 6219; Council Directive 93/13/EEC; Kaplan, 2004; Plain English Campaign (2017). Unfortunately, there is no such requirement for laws, contracts, and judgments; instead of a short, clear, and concise sentence, there is often a whole paragraph or page.

The adoption of a legalistic approach and complex legal language have led to greater costs due to burgeoning litigation, wasted time, and increased workload of the courts. From the consumer’s point of view, an ordinary citizen is now required to sign lengthy, complex, and unclear legal documents and contracts, without having understood them and sometimes without the opportunity to read them. When visiting internet sites, ordinary citizens are required to agree to cumbersome and lengthy sets of rules.

The following may prove an illustrative example of the importance of wording. In 2008, the global financial crisis known as the “subprime mortgage crisis” erupted, contributing to a severe recession. There were many economic and financial reasons for this crisis: 100% financing, low-level repayments in the initial years, various types and rates of interest, a large number of middlemen, different kinds of fees and commissions, and a fall in real estate prices. In my opinion, another reason may be added. The wording of the debt contracts was so complex and long-winded that borrowers did not understand what they were signing, what the costs were, and what kind of obligations they were assuming. What was unusual and no less a cause for concern, was that the decision makers in the financial institutions themselves did not in fact understand what they were deciding about, and they assumed that the contracts were appropriately worded in the professional language of jurists and attorneys (Bar-Gill, 2009; Ashcraft, & Schuermann, 2008). My supposition is: It is quite possible that the financial complexity of the real estate transactions involved led to lengthy and cumbersome legal drafting of the transaction documents, so that the lingual aspect also contributed to the great financial crisis around the world. This article will not relate to this subject. However, analysis of subprime mortgages from the language

point of view is an interesting, separate and special subject for research (the legal wording of the contract, its clarity and length, the organization of the Contract and their effect).

My contention is that plain language, clear, short and concise in contracts and pleadings is much preferable to unilateral, detailed, long and complex writing. It is preferable to a contract that takes into account all options without regard to the chances of their occurrence. As is customary in business, just as in relations between people, it is best to concentrate mainly, and to focus, on establishing a relationship of trust between the parties, in fairness and in good faith. In a clear and short contract, the chances of fulfilling the will of the parties are much greater. It will save much time, paper, and unnecessary costs and will achieve better results. In court, as well, when claims and petitions are shorter and more relevant, the hearings will also be shorter and the legal review quicker.

Brevity in General and in Law

“I would have written a shorter letter, but I did not have the time” is a famous quote made by Blaise Pascal, the 17th Century French scientist and philosopher.

It is interesting to note the memorandum of Prime Minister Winston Churchill, who wrote on August 1940 to the War Cabinet (Churchill, 1940):

To do our work, we all have to read a mass of papers. Nearly all of them are far too long. This wastes time, while energy has to be spent in looking for the essential points.

I ask my colleagues and their staffs to see to it that their Reports are shorter... Let us have an end of such phrases as these: “it is also of importance to bear in mind the Following considerations”...

He ended this letter by predicting: “the saving in time will be great, while **the discipline of setting out the real points concisely will prove an aid to clearer thinking**” (my emphasis).

The Peace Treaty between Israel and Egypt from 1979 included only nine clauses and three appendixes and it is valid until today.

Currently in the United States, President Donald Trump asks for documents containing a summary of 10 key points (cf Desjardins, 2016). The US-China Trade Agreement of 2017 was drafted as a 10-point summary (U.S. Department of Commerce, Office of Public Affairs, 2017). Moreover, Trump is renowned for communicating by Twitter in tweets (short mes-

sages) of two or three sentences (Twitter allows users to tweet messages of up to 140 characters). Obviously, it is impossible in practice to draft a legal contract using Twitter or SMS or WhatsApp. Nevertheless, the public prefers short messages.

According to Lustigman and Aharoni (2016), the reasons for writing long judgments are necessity for a reasoned judgment, multiplicity of precedents, and obiter dictum. This has resulted in rulings turning into academic papers full of moral reasoning. The root cause is that court pleadings are often written from the lawyer's point of view where "legal fees are charged per word", hence preferring to repeat claims in order to be certain that the judge received the message. The authors conclude: "The time has come to break the vicious cycle of lawyers and judges feeding endless words to each other" (Lustigman & Aharoni, 2016: 108). Advocate Eitan Gat notes that it all begins with legal education at universities, where students are often required to read thousands of pages of legal material and raise every possible argument because it is impossible to know which claim will be accepted (Gat 2013). Technology obviously facilitates this. Excess wording is easily added to legal documents with the copy-and-paste functions of word processing programs.

Professor Aharon Barak, former Chief Justice of the Supreme Court of Israel stated in a judgment similar to the ancient Chinese sage: "I apologize for the length of the judgment, but I did not have enough time to write a shorter judgment" (HCJ 428/86: 586). A **366**-page ruling declared the Supreme Court's authority to invalidate a law legislated by the Knesset (Israeli Parliament) (CA 6821/93). Attempts to limit pleadings and judgments in Israeli Courts have been met with opposition. The recommendations of a committee for the reform of Civil Procedure established in 2010 to limit the page length of pleadings, chaired by a Judge, were not implemented due to the opposition of lawyers. A proposal from the Israeli Ministry of Justice in 2013 to require judges to restrict the level of detail in respect to the parties' arguments, relinquish precedents, and use concise explanations has not been implemented due to the Supreme Court Chief Justice's opposition and fear that judicial independence may be impaired (Lustigman & Aharoni, 2016).

While there is now more general agreement as to the need for simple and clear wording of legal documents, the situation is different with regard to conciseness and brevity. Apart from what lawyers are used to, there will be jurists who argue that the lawyer should foresee all of the contingencies and put forward all of the arguments. Their reasoning is that if you overlook a possible argument, you may lose the case, because you never know

which argument may be accepted and the judge may accept an alternative argument, which at first glance appears to be weak.

Example of a Forty-Line Text Being Condensed into a Single Line

Many pleadings are drafted using intensifying and qualifying words in order to add extra strength and meaning to the content. For example, in the phrase “an obvious and deliberate deception”, isn’t it sufficient to use only the word deception? Adding two adjectives appears unnecessary and unconvincing. Here is an example of unnecessary detail: “A municipality is a local authority pursuant to the meaning of the Municipalities Ordinance (New Version)”. Doesn’t the word municipality suffice? This would bring a 66 to 90 percent saving in words, writing time, reading, printing, copying, etc.

I reviewed over 40 class actions and found the abovementioned to be their common language (Shattah, 2015). Following is an extreme example of an unnecessary extension: two sections from the website of one of the largest financial institutions in the Israeli economy that are intended for its customers:

- a) **Legal Notice Concerning Yield Portfolio Data:** the calculation is provided for indication purposes only and does not constitute a binding precedent for any purpose including offsetting of losses and/or tax benefits. The Bank and/or its employees are not responsible for the completeness, correctness or accuracy of the data and/or calculation and/or for any inaccuracy, error, omission or incorrect calculation, even though the data was skilfully and professionally prepared and an effort has been made to ensure that the calculation shall be correct and accurate at the date of its issue, subject to the yield calculation methods detailed above, customarily used by the Bank in this matter. Nothing contained herein shall be construed expressly or impliedly to be a representation or liability whatsoever (including third party liability) as to the correctness, accuracy or correctness of the calculation. The calculation is subject to the data as it appears in the Bank’s records that are binding for all intents and purposes.

In place of this 108-word text extending over not fewer than ten lines, a single sentence of only five words would have sufficed: **The calculation is provided for indication purposes only.** The remaining details add nothing to the content.

- b) **Conditions of Use – Legal Notices:** the simulation is intended for illustrative purposes only and its results should not be relied upon since they may differ from the actual tax calculation. The simulation should not be construed as tax advice. Use of the simulation is conditioned on the acceptance of the conditions of use. Data presented during the simulation such as capital gain/loss, amount of tax, security rate/ the purchase price or redemption of participation unit of mutual funds/ the option price, balance of setoffs before/after offsetting, based on and calculated according to the rate of the security/ the purchase price or redemption of participation unit of mutual funds/ the option price/ representative exchange rate/ the current index at the time of performing the simulation and they may fluctuate from that date to the date that they are actually presented to the customer for his review and/or until date of giving instructions and/or the final and binding data regarding the performance and/or calculation of tax. Consequently, the data, calculations and results are not final or absolute and do not include additional payments that apply at the time of actual performance. The results of the simulation will be presented in shekels and should be construed as a general auxiliary tool and as an approximate calculation for receiving only an indication since changes may occur until the final, exact and binding figures are determined regarding performance and tax liability / credit / offsetting. In case of discrepancy between the data presented at the time of performing the simulation and the final data to be determined and by which any credit/charge /offset and all related thereto, the data shall be binding as determined on the date for performance according to the Bank's calculations. It should be noted that within the framework of the simulation, components such as a portion of the commissions, expenses and/or expenses collected in respect for an act or retention period, such as account management fees, sales commissions, custody fees, broker commissions etc. are taken into account only for the calculation determining the amount to be paid. Therefore, reliance should not be placed on the data included in the report; it does not constitute a precedent and are not binding, both with regard to the facts and the manner of calculation. The Bank acts skilfully and professionally in preparing the calculation in order to arrive at a calculation that will provide an indication as close as possible to the final calculation. However, in some cases the calculation, data and results are based on prices/indices and/or rates that are not updated to the date of performing the calculation, *inter alia*, due to the unavailability of updated data at the time of calculation. In addition, the prices, rates and/or indices are extracted from many different sources and the Bank will not be liable for their completeness, and/or for any inaccuracy, error, omission, or other deficiency. Therefore, there may be significant deviations between the approximate calculation performed within the framework of the simulation and the binding calculation for tax purposes. Hence, the results of the simulation should not be relied upon for the purpose of buying or selling or computation of offset

regarding capital gains tax on securities, options, mutual funds and any other security and/or other financial asset. The simulation data shall not bind the Bank or to credit a customer and in no event, shall the customer have any claim, lawsuit or demand whatsoever against the Bank concerning the presentation of the data or the method of the approximate calculation and/or completeness of the data on which the calculation was based in the simulation report and their accuracy. Nothing contained in the simulation report shall constitute a basis for a claim, claim or demand against the Bank. It should be clarified that a change in the order of actions regarding the calculation according to this simulator and the actual performance may affect the calculated tax amount. The simulation does not constitute a tax advice, general and personal and should not be construed as such or as a substitute for personal tax advice according to the data of each customer.

This entire text, containing 261 words written on 40 lines, could be expressed in only seven words (a ratio of almost 40: 1): **The calculation is indicative only and should not be relied upon.** The extra text is burdensome and adds nothing to the consumer's understanding.

Writing a Good Judgment

In 2016, two attorneys and lecturers, Ran Lustigman and Michal Aharoni, published a comprehensive book on Hebrew Legalese, which soon became a textbook. At the book launch, Justice Esther Hayut, the current Chief Justice of the Supreme Court in Israel made the following statement from a lecture on "Writing a Good Judgment" (Hayut, 2017):

The writing of a good judgment relates not only to the contents of the judgment, but also to the manner in which the judgment was written, to the language and style in which it was written and its length, structure and design. James Boyd White, law professor, literary critic and philosopher, defined the phrase "the profession of words," by which speakers must speak "in the language of the audience," noting that the legal language is required to be relevant both to the litigants and to the legal community. The form and style are intended to promote the content, and should not be seen as an end in itself. A good judgment should be written simply and clearly. However, we should not mix simplicity (the quality or state of being simple) with simplification (the act of simplifying or something that has been simplified). Albert Einstein once said that: "If you can't explain it simply, you don't understand it well enough".

Verbosity and fussiness should be prevented. The art of summarizing is indeed an art, and it requires effort, but it is a worthwhile investment if we want to compose a document that will be user-friendly to its target audience

and that its readers will survive the entire length of the judgement from its beginning to the end without getting tired and stop.

Therefore, unnecessary references and quotations should be avoided and we must make every effort that the judgements do not resemble papers, because legal papers usually deal with abstract legal theories and their development, while judgments have to do with people.

In this context, let me emphasize that in my view, maintaining personal style in writing judgments is not necessary invalid, and we should not exhort the use of standard, uniform, and familiar formats in writing judgments.

Conclusion – What is a good judgement? It may be said that in order for judges to hand down a good judgment, thought and effort should not only be devoted to the legal content and outcome of the judgment. We must strive for clear, simple, focused, yet reasoned and convincing writing, in order to enable the losing party to understand why the court preferred the other party's case in a civil dispute, and why the court convicted or acquitted the defendant in a criminal proceeding. Writing characterized by these features requires a conscious process requiring effort that relates not only to the question of what will be written in the judgment, but also to the question of how the judgment will be written.

It is worthwhile to note that Sir Terence Etherton, the Master of the Rolls, who is Head of Civil Law in England and Wales, recently encouraged their Court of Appeal judges to write short judgments where it is possible. According to Etherton, if an important legal question did not arise, if the judgment of the lower court detailed the facts, and if there is no dispute regarding the facts in the appeal, there is justification to shorten the ruling of the appeal (Sabur, 2017). Judge Rafferty opened a recent ruling as follows (*BS (Congo) v. Sec'y of State for the Home Dep't*, 2017: [1]):

This is a short form judgment which, with the encouragement of Sir Terence Etherton MR, judges of the Court of Appeal may in future use for appellate decisions in appropriate cases. This appeal raises no issue of law, precedent, or other matters of general significance and the relevant facts and documentary material are set out in the judgment under appeal and are not in dispute.

A Proposal to Summarize Pleadings

Not only have judgments become longer and longer. The pleadings and documents submitted to the court by the parties have also expanded and often contain many repetitions and unclear wording.

As Israeli Supreme Court Chief Justice Grunis wrote in the *Super Medic* case (LCA 615/11):

There is a phenomenon whereby pleadings, affidavits, appendices, etc., extend over more and more pages. We encounter documents with a much larger volume. In other words, the paperwork is multiplying and multiplying.

Attorney Adi Avrunin (2014) has proposed summarizing the parties' pleadings to 500 words on one page. Thus, the court will be able to ascertain from the outset the key points of the parties' pleas and a party can become aware of the other party's claims and arguments. He notes that for petitions submitted to the U.S. Supreme Court there is a rule that pleadings must be drafted in a manner that includes the question in dispute without repetition and unnecessary details. The summary appears on the first page of the plea (Sup. Ct. R. 14):

1. A petition for a writ of certiorari shall contain, in the order indicate:
 - (a) The questions presented for review, expressed concisely in relation to the circumstances of the case, without unnecessary detail. The questions should be short and should not be argumentative or repetitive"... The questions shall be set out on the first page following the cover, and no other information may appear on that page. The statement of any question presented is deemed to comprise every subsidiary question fairly included therein. Only the questions set out in the petition, or fairly included therein, will be considered by the Court.
4. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration is sufficient reason for the Court to deny a petition.

Research

In an interesting article, Advocate Dana Peer (2015) reviewed research studies carried out in the United States of America. These studies show that judges, lawyers, and clients preferred simple language to cumbersome legal language, and that judges thought simple language was more convincing than the language customarily used by lawyers.

For research purposes, Texas attorney Sean Plummer (2010) sent pleadings drafted in plain legal language or in plain English to 800 judges. The pleadings were of different lengths: three and a quarter pages, two and a half and two pages, but the results were unequivocal: The judges preferred the pleadings formulated in simple language, and found them more persuasive, understandable, and effective. As Plummer concluded, "Therefore, submitting documents in plain language is in the lawyers' interest."

Researchers of plain legal language have begun to conduct empirical experiments, with the majority of them examining the following questions: Does simplifying the language in fact improve the level of readers' understanding? Does simplifying the language serve the client's interest? What is the public's attitude toward lawyers using simple language?

A number of studies performed on juries have shown a significant improvement in jurors' level of understanding when the guidelines have been reformulated into simple language. Another research study regarding medical consent forms showed that users' understanding increased twofold when the form was written in plain language and the time required for reading was considerably shortened (Paasche-Orlow, Taylor, & Brancati, 2003).

Those formulated in simple language were more convincing than others. This experiment also found that lawyers and judges rated the drafters of the simpler paragraphs as more reliable, more educated, and as working for more prestigious law firms.

According to the surveys and experiments that were conducted, it was found that a non-legal public prefers the use of simple language by lawyers and is not impressed by legal language. So, if simple legal language is favoured by clients, judges, and even lawyers, why do we continue with complex and lengthy legal language (Legalese)? Apparently, awareness has not seeped through enough although there has been an improvement in recent years. A New Zealand researcher who for over 20 years, analyzed the development of the level of formulation of judgments in New Zealand according to various statistical criteria and measures, has also found improvement (Pearson 2013).

Pearson (2013) measured how the readability of New Zealand affects judgments. He took a random sample of 45 appellate court judgments – from 1990, 2000, and 2012 – and applied clarity tests to their headings, parties, name, sentence length and writing style. He divided these elements into three categories: **Start**: how well the judge introduces the cases. **Structure**: how well the judgement is organized. **Style**: how clear and readable the writing style is. He found that over time the Start and Structure categories had greatly improved. The Style category had improved as well, but less than Start and Structure.

It is worthy to note that business administration, statistics, and probabilistic studies can be used to analyze judgments, and examine common issues and causes of disagreements and disputes – thus providing the possibility to draft better contracts and address the problems frequently encountered in implementing the contract.

It is worthy to note that there are websites that discuss the application in the United States of the Plain Writing Act of 2010. A study of these sites provides evidence of the wide scope and application of the law. One example is the Food and Drug Administration (FDA) website – www.fda.gov/aboutfda/plainlanguage/. The following documents appear on the website: a copy of the law; the Federal Briefing on Simple Language Writing; the principles of simple language, and a compliance report on the subject at the FDA. The site provides examples of simple words for use instead of complicated words. The site also lists the names and addresses in the United States of five websites relevant to this subject: five federal and 11 non-federal.

Language according to Three Disciplines: Law, Business Administration, and the Social Sciences

I will try to examine language according to a number of disciplines: In law, business administration, and the social sciences.

In law, at least *prima facie*, the more reference that is made to any event which may occur or to any possible contention, even if it is marginal – so is the contract more complete and professional.

In business administration, attention is paid mainly to costs, to cost/benefit and to the probability that the event will occur, and to its expected value (probability multiplied by amount).

In social sciences, what is important is the understanding between parties, the feeling of fairness, so that even if an important point were not mentioned, the parties would proceed logically and fairly.

Each approach has its advantages and disadvantages:

In law – The approach does not take into account the length of the contract, the comprehension thereof, whether it will be read by the parties, the reliance of the parties on their lawyers, the risk of enumerating all of the circumstances (if a certain circumstance is not included, that is a sign that it was not meant to be included), the risk that the contract will create a misunderstanding or a departure from the way things are interpreted or that the prospects are greater that it becomes the subject of litigation.

At the start of his article “Reassessing Unilateral Contracts: The Role of Offer, Acceptance and Promise” Peter Tiersma (1992) notes:

“One of the most notorious rules of traditional contract law holds, in its original form, that an offer of a unilateral contract may be accepted only

by completed performance, and that consequently the offeror may revoke his proposal as long as the offeree has not done all that is required of her”.

It is preferable not to draft a unilateral contract, as it increases the chances of enforcement by the courts.

There is the example of the clause in a rental agreement where the lessee undertakes to paint the apartment upon its return to the lessor. When the apartment was returned it was clean, but the lessor insisted on performance of the clause, – so the lessee painted the apartment black, contending that there was no provision as to the color in which the apartment should be painted. Sometimes, one cannot think of all the possible circumstances that occur in life. The great disadvantage of trying to take all circumstances into account is the cost in terms of the time and money required for preparing the contract. The advantage of doing so is that all possible circumstances are considered in advance and the counterparty’s agreement thereto is obtained.

In business – What matters is mainly the size of the amount at stake, and how likely it is that there will be a misunderstanding and a dispute will develop between the parties. Therefore, more importance is attached to choosing the counterparty to the contract. A good counterparty is more important than a good agreement and a problematic counterparty, and the chances of conducting litigation with him are greater. Marginal matters and small amounts are ignored and time will not be wasted on arguing. If the contract is short, each party will read it and know what he is signing. The chances of such a contract being performed are greater. It is a fact that the vast majority of contracts are performed and there is no need to go to court. Going to court is relatively expensive, apart from the vexation and the time wasted. In addition, as for interpretation of the contract, the principal advantage of choosing a good counterparty lies in saving costs in the preparation of the contract and afterwards in saving tiresome and useless arguing.

In society – The vast majority of parties want a fair contract and fair execution. They do not want to go to court and be involved in litigation. If differences of opinion arise, in the vast majority of cases they can be resolved in one telephone conversation. Communication between the parties is important. In the worst case of a dispute reaching the court, it is assumed that the court will adjudicate according to the law, according to what is usual, using common sense and adhering to the principles of justice. The situation where the consumer does not read the contract due to its length and cumbersome wording is a situation that does not make sense. The consumer expects that before going to court, the lawyers can speak to each other and settle the matter. After all, they are “Officers of the Court”, and

are supposed to know what the legal situation is and to convince the counterparty. Instead, one often sees that when a dispute arises, a sharp letter is immediately sent to the other party, and there is not even one telephone conversation. The advantage of the social approach is better communication and a more tranquil, qualitative life, better business administration, saving time, costs and vexation. The disadvantage of the social approach is its naiveté – there are people who are not fair from whom one needs to be protected.

In recent years, social awareness has increased the accessibility of legal information to people with certain mental disorders. Documents for this audience must include the key points, written in short and simple sentences, by use of simple vocabulary, etc. On 13th December 2006, the United Nations published the Convention on the Rights of Persons with Disabilities. Article 13 (Access to justice) of the Convention reads as follows:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations... in all legal proceedings.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice.

In Israel, the Equal Rights for Persons with Disabilities Act has existed since 1998. Article 6 refers to linguistic accessibility. In compliance with the Act, the Legal Aid Department at the Ministry of Justice issued a form drafted in simple language for the provision of a public legal service, while creating modifications in the document for people with intellectual disabilities or cognitive impairment.

It is interesting in this context to note a recent ruling in the Family Court in England that dealt with the issue of child custody. The judge formulated the ruling in language that the children would also understand (*Lancashire CC v. A*, 2016).

The existing situation – There can be no doubt that certain progress has been made.

For instance, the technological ease of copying, and of incorporating sentences and excerpts from one document into another. In the very large law firms in the United States, a modus of long contracts came into vogue when they began charging fees by the hour due to there being so many lawyers. Lawyers who are not familiar enough with the subject of the contract focus on the stereotypical legal language and on lengthy clauses. Business and

social cultures have changed, and it would appear that the legal system has also made its contribution – not just with long judgments, but also by referring to every detail in legal documents. Instead of encouraging trust between the parties, these documents provoke disputes by raising all possible negative scenarios. It is like drafting a divorce agreement and a marital agreement at the time of marriage. When this happens it may create unpleasantness and sometimes raises the possibility of or causes conflicts and rivalries.

In order to protect themselves against any seminal judgment, companies tend to add to their standard contracts a clause or a chapter, and so the contract becomes longer. The usual and the self-evident requirement to compromise gives rise to a plethora of claims, as the plaintiffs reckon that at most they will be required to settle.

In the user license agreement (EULA) of iTunes application “the home of Music Entertainment,” there is a clause that the user has to accept by a click:

You also agree that you will not use these products for any purposes prohibited by the United States law, including, without limitation, development, design, manufacture, or production of missiles, or nuclear, chemical, or biological weapons.

Professor Ben Shahr from University of Chicago related in his Interview to “Marker week” (16.5.2014), that when he printed the terms of usage of iTunes, it came to 30 meters in length!

Ben Shahr and Carl Schneider from University of Michigan discuss “The Failure of Mandated Disclosure” in their article (2010) and in their book (2014). Their thesis raises many points cited herein with respect to the length of contracts. Why does mandated disclosure fail to achieve its purpose of improving disclosure decisions? The first cause they mention is “Law-Makers”:

Disclosure mandates are too detailed... The forms become so complex and so long, that disclosers have trouble assembling and organizing the information. Disclosees do not read them, and cannot understand and assimilate and analyze the quantity of information they contain. Mandated disclosure attempts to solve social problems by requiring the disclosure of information. We have now looked at the likelihood that the disclosee will receive, understand, and remember the information whose disclosure is mandated. We have seen that each of these is so problematic that often the disclosee will not encounter the information, will not try to assimilate it, will not read or hear it correctly, will not understand it, or will misunderstand. The whole point of mandated disclosure is to provide people with good information. If they do not take up the information and learn it accurately, mandated disclosure fails.

“The mandate disclosure mantra – more information is better than less”: the result should not be that very few people read the Terms of Usage, or the contract, because of their length and complexity.

To conclude, the right, simple and concise wording is that which focuses on the main issue, and takes into account all of the good components from all three approaches: the legal, the business, and the social.

A good contract is a non-unilateral contract, a clear and short contract that includes the main and important elements on which the contract between the parties is based, a contract that does not relate to default scenarios whose chances of occurrence are negligible, a fair contract that the parties can read and understand and that will engender trust between the parties. This is the recommended type of contract that most likely will satisfy the main objectives of the parties and have the greatest chance of enforcement. Such contracts and statements will save time and costs. Since clients are concerned mainly about results, shortening the contract will not hurt lawyers’ fees. Rather, it will enable lawyers to handle a larger number of cases. Conducting empirical studies on the subject will allow us to relate to the validity of these conclusions.

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